

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GREGORY BROWNLOW,	)	NO. CV 06-7389 AHM (FMO)
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER TO SHOW CAUSE</b>
	)	
LEROY D. BACA, Sheriff,	)	
	)	
Respondent.	)	

Title 28 U.S.C. § 2254 confers jurisdiction on a district court to issue a writ of habeas corpus when a federal prisoner establishes that he or she “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” Burnett v. Lampert, 432 F.3d 996, 999 (9th Cir. 2005) (quoting Preiser v. Rodriguez, 411 U.S. 475, 484, 93 S.Ct. 1827, 1833 (1973)); see also Picrin-Peron v. Rison, 930 F.2d 773, 775 (9th Cir. 1991) (“Historically, the function of the writ is to secure immediate release from illegal physical custody. The Supreme Court has held that under the writ of *habeas corpus* we cannot do anything else than discharge the prisoner from the wrongful confinement.”) (internal quotations marks and citations omitted) (italics in original).

Subject matter jurisdiction over petitions filed under 28 U.S.C. § 2254 exists only when the petitioner is “in custody” under the challenged action at the time the petition is filed. *Maleng v.*

1 Cook, 490 U.S. 488, 490–91, 109 S.Ct. 1923, 1925 (1989). A person who is on parole is “in  
2 custody” for the purposes of habeas jurisdiction. Goldyn v. Hayes, 444 F.3d 1062, 1063 n. 2 (9th  
3 Cir. 2006). “Mootness is jurisdictional. This means that, throughout the litigation, the plaintiff must  
4 have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be  
5 redressed by a favorable judicial decision.” Burnett, 432 F.3d at 999 (internal quotation marks and  
6 citations omitted). Thus, the “in custody” requirement divests federal courts of jurisdiction over  
7 petitions once the petitioner is no longer “in custody.” See Cox v. McCarthy, 829 F.2d 800, 803  
8 (9th Cir. 1987) (district court lacked habeas jurisdiction because petitioner had already served  
9 additional terms and been released on parole and therefore action challenging imposition of  
10 additional terms was moot).

11 On November 19, 2006, petitioner filed a Petition for Writ of Habeas Corpus by a Person in  
12 State Custody pursuant to 28 U.S.C. § 2254. On February 6, 2007, petitioner filed a First Amended  
13 Petition for Writ of Habeas Corpus by a Person in State Custody (“FAP”) pursuant to 28 U.S.C. §  
14 2254. In the FAP, petitioner does not challenge the validity of a criminal conviction, but rather, he  
15 challenges his parole revocation. (See FAP at 2 & 5-6). The court has recently received  
16 information that petitioner has been discharged from parole. Petitioner’s discharge from parole,  
17 which likely means that he is no longer “in custody,” may render this action moot. See Spencer  
18 v. Kemna, 523 U.S. 1, 14, 118 S.Ct. 978, 986 (1998) (habeas petition challenging a parole  
19 revocation decision becomes moot when the term of incarceration connected to the revocation  
20 decision expires unless there is an affirmative showing of specific collateral consequences); see  
21 also Aaron v. Pepperas, 790 F.2d 1360, 1362 (9th Cir. 1986) (habeas petition challenging  
22 imposition and duration of sentence becomes moot upon release from custody).

23 However, before taking affirmative steps to dismiss the case, the court will afford the parties  
24 the opportunity to address whether there are any continuing collateral consequences as a result  
25 of petitioner’s incarceration sufficient to satisfy the “case or controversy” requirements of Article III,  
26 § 2 of the United States Constitution.

27 Accordingly, IT IS ORDERED THAT:  
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